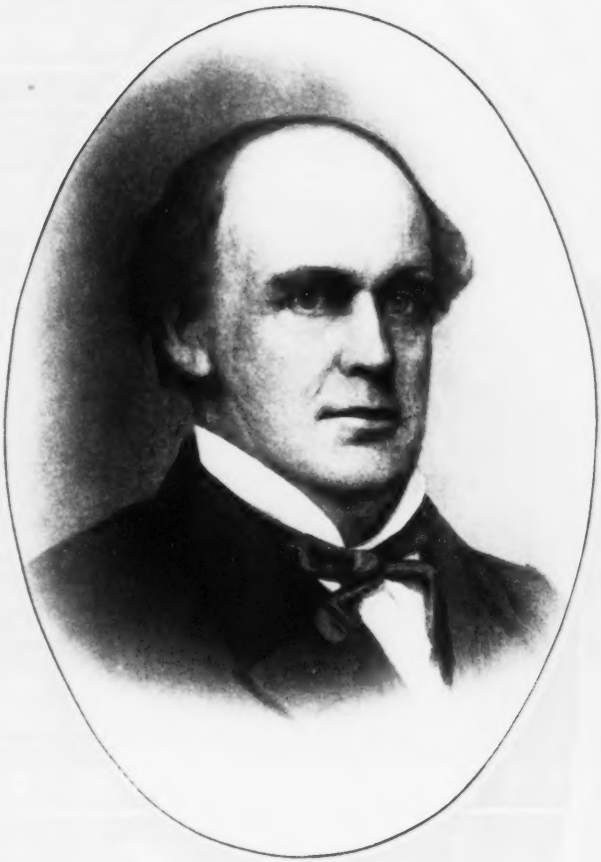

SALMON P. CHASE

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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Salmon P. Chase.

The sixth in the line of the Chief Justices of the United States Supreme Court is one who commands the highest respect as a judge, but whose judicial career was so brief, and his part in the work of President Lincoln's administration during the supreme struggle of the Civil War was so great, that history will doubtless speak of him oftener as Secretary of the Treasury than as Chief Justice.

Salmon Portland Chase was born at Cornish, New Hampshire, in 1808, the eighth of eleven children of Ithamar Chase, whose ancestor, Aquila Chase, came from England about 1640. His mother was of Scotch blood. One of his father's brothers, Dudley, was a United States Senator and another, Philander, was the Protestant Episcopal bishop of Ohio, with whom, after his father died, he lived for three years. He graduated from Dartmouth College in 1826. He then established a classical school for boys in Washington, D. C., and studied law with William Wirt. Of course he found time also to write a poem to Wirt's daughters, and this was published. In 1830 he was admitted to the bar and settled in Cincinnati, Ohio. He had the usual period of waiting for clients, and is said to have broken down in his first argument before a Federal court. About this time he prepared an edition of the Ohio statutes, with notes and historical introduction. Eminence in his profession came at length, and many important cases, especially in bank business.

His political career was exciting and stormy. He was not closely identified with any political party whatever, but was most uncompromising in his opposition to slavery. In 1837, when he defended a fugitive slave woman and attacked the constitutionality of the statutes under which she was claimed, an old lawyer said: "There is a promising young man who has just ruined himself." Twice he defended James G. Birney for harboring a fugitive slave. In a similar case he and William H. Seward, without compensation, defended John Van Zandt, the original of the John Van Trompe in "Uncle Tom's Cabin." In 1838 he reviewed with great severity a report of the judiciary committee of the state senate denying trial by jury to slaves. On the organization of the Liberal party in Ohio in 1841 he was a leader. He earned at length the name of "the attorney general for runaway negroes." The colored people of Cincinnati presented to him a silver pitcher for his services "in behalf of the oppressed." He wrote most of the Buffalo platform of 1843, on which James G. Birney was nominated for president, but a resolution offered, to the effect that the fugitive slave clause of the Constitution was not binding on the conscience, but might be mentally excepted in taking an oath, met the vigorous opposition of his clear brain and sturdy honesty. He presided over the Free Soil convention of 1848, in Buffalo, which nominated Martin Van Buren. In 1849 a coalition of the Democrats and Free Soilers in the Ohio legislature made him United States

Senator. In the Senate he opposed the Kansas-Nebraska bill and the repeal of the Missouri Compromise, and did much to arouse the conscience of the North. When the Baltimore convention of 1852, that nominated Franklin Pierce, approved the fugitive slave law, he withdrew from the party and wrote a letter to Benjamin F. Butler, of New York, advocating a new party, for which he wrote a platform that was subsequently adopted at Pittsburg. He was elected governor of Ohio in 1855, and renominated by acclamation and re-elected, despite the dividing of votes by the New American or Know-Nothing party. In the convention that nominated Abraham Lincoln for President, Mr. Chase received forty nine votes on the first ballot, and on the third ballot his friends gave Mr. Lincoln a majority.

On the accession of the new administration under conditions of unparalleled excitement and confusion, when war was latent, government chaotic, and the destruction of the Union was feared by many and boldly prophesied by its enemies, Mr. Chase was the Secretary of the Treasury. His management of the finances of the nation under the terrible strain of the protracted Civil War entitles him to rank with his great predecessor, Alexander Hamilton. The issue of greenbacks as a legal tender was a measure to which he felt forced by necessity. To the New York bankers he said: "It is certain that the war must go on until the rebellion is put down, if we have to put out paper until it takes a thousand dollars to buy a breakfast." Like other members of the cabinet of Mr. Lincoln, especially at the beginning, he underestimated the greatness of his chief, and has been credited with an ambition to become himself the Chief Executive. For a time near the end of Mr. Lincoln's first term it seemed that Republican opposition to the President might become very formidable and unite to make Chase his successor. Because of these conflicting political interests Mr. Chase resigned from the cabinet June 30, 1864. But his personal rivalry did not prevent the just and great hearted President from appreciating his high character and eminent ability, or from choosing him as the successor of Chief Justice Taney on the Supreme Court Bench. This was done on December 6, 1864, after Mr. Lincoln's re-election.

In the Supreme Court, Chief Justice Chase exhibited high judicial qualities. As Secretary of the Treasury he had issued legal tender notes; as Chief Justice he declared them unconstitutional. This is a striking instance of a judge's decision against the validity of what has been done with his own approval and participation. He presided at the impeachment trial of President Johnson, and sat in the decision of many other cases of large importance. His opinions are always regarded with high respect. But the exacting labors and the great strain of care and anxiety during the Civil War had not left him strength for many years of judicial service, though with each year until the end he was increasingly esteemed and honored. He died May 7, 1873.

In his personal characteristics Chief Justice Chase was said to be somewhat reserved and austere, with a fair share of human ambition. But he was in the highest sense a man of integrity, honor, and religious character. He was a member of, and a regular attendant upon, the Protestant Episcopal Church. He was thrice married, but in each instance his married life was soon terminated by the death of his wife. He had two daughters, one of whom, Kate Chase-Sprague, was widely known for her brilliant early career and the later vicissitudes and misfortunes of her life.

The Insular Cases.

The long expected decisions in the Porto Rican cases were handed down by the Supreme Court of the United States on May 27. They have been said, both by those who approve and those who disapprove of them, to be the most important cases ever decided by that court. Whether that is true or not, it is not easy to measure their importance. Newspaper comment on the decisions, though much confused in the interpretation thereof, has been none the less bold and emphatic in its approval or denunciation. One of the daily journals has proved to its own satisfaction that the same judges decided in one case exactly what they denied in the other. But, ignoring the questions really decided, much of the newspaper discussion has been directed to the general proposition that the Constitution does or does not follow the flag.

The questions actually decided in these cases may be very briefly stated. One of the minor cases, Huus v. New York & Porto Rico Steamship Company, decides that a steamship trading between Porto Rico and New York is engaged in the coasting trade as distinguished from foreign commerce, and is therefore not subject to the state pilotage laws when under the direction and control of a pilot licensed

under the Federal laws. This, of course, amounts to a decision that Porto Rico is in one sense, at least, not a foreign country.

In De Lima *v.* Bidwell it is held that the island of Porto Rico after its cession to the United States, though not formally embraced by Congress within the customs union of the states, was no longer foreign country within the meaning of the Dingley tariff act, providing for duties upon articles "imported from foreign countries." But four justices, McKenna, Shiras, White, and Gray, dissented from this conclusion.

In Dooley *v.* United States it is held that the exaction of duties on importations into Porto Rico from the United States before the cession of the island by treaty could be lawfully made during military occupation of the island, under the war power, by orders of the military commander and the President as Commander in Chief, and that Porto Rico and the United States, during such military occupation and before the cession of the island by treaty, were foreign countries with respect to each other within the meaning of the revenue laws; but that, after the cession of the island by treaty, duties could no longer be imposed by order of the military commander and by the President as Commander in Chief, because the levy of duties under the war power extended only to importations from foreign countries, and by the treaty of peace the island ceased to be foreign country.

But in Downes *v.* Bidwell it was held by a bare majority of the court that Porto Rico is territory appurtenant to or in possession of the United States, but not a part of the United States within the meaning of the constitutional provision that duties must be uniform throughout the United States, and therefore that the Foraker act, imposing duties upon imports from Porto Rico, was not in violation of that provision. Mr. Justice Brown, who wrote the opinion in the De Lima Case, declaring that Porto Rico was not foreign country within the meaning of the Dingley law, also wrote the opinion in the Downes Case, but the four justices who concurred with him in upholding the Foraker act were they who dissented in the De Lima Case. They consistently contended in both cases that Porto Rico is still foreign country, and therefore not a part of the United States. On the other hand, the four justices who concurred with Mr. Justice Brown in the De Lima Case in holding that Porto Rico is not foreign country dissented in the Downes Case, and consistently contended that, as it was *not* foreign country, it was a part of the United States throughout which duties must be uniform. Mr. Justice Brown, who united in both decisions, took the position that, while Porto Rico is not foreign country under the tariff laws, it is yet not a part of the United States within the constitutional provision above quoted. He holds that it is, however, a territory of the United States, and that the territories are not subject to that provision, but that the "United States," within the meaning of that clause, as well as in the clause respecting commerce among the states, include only the states that are united, and not the territories. But three at least of the four concurring judges and also the four dissenting judges rejected this theory, and held that the territories are a part of the United States within the meaning of this constitutional provision. The result is that the majority in the Downes Case is made up of irreconcilable elements; the minority in the De Lima Case becomes a majority in the Downes Case by the accession of one justice, whose agreement in the decision is based on a theory which the rest of the court overwhelmingly reject. Under these circumstances the decisions can hardly be deemed of much value as precedents.

The question of supreme importance, which is in respect to the power of the United States to acquire territory without making it a part of the United States in the sense that our other territories are, seems to be in effect decided in the negative, though that power is asserted emphatically by four of the justices who form part of the majority in the Downes Case, but it is vigorously denied by the four dissenting justices, as well as by Mr. Justice Brown, who writes the majority opinion, and who expressly declares in the De Lima Case that "the territory thus acquired is acquired as absolutely as if the annexation were made, as in the case of Texas and Hawaii, by an act of Congress," and that by the ratification of the treaty of Paris the island became "territory of the United States." He emphatically denies that a territory may be at the same time both foreign and domestic.

Unsatisfactory as the decisions are by reason of the failure of a majority to agree on the doctrine that should control, it is not just to say, as many critics of the court have done, that there is any inconsistency on the part of the justices or of any of them. The consistency of the eight who are equally divided in both cases is manifest. But there is no basis

for asserting that Mr. Justice Brown is inconsistent in the two cases. His position in the one case is that Porto Rico is no longer foreign country within the meaning of the Dingley tariff law. His position in the other case is that it is a territory of the United States. This, of course, is consistent with holding that it is not foreign country. While he stands alone in holding that the territories are not part of the United States within the revenue clauses of the Constitution, that doctrine, whether right or wrong, is not in any possible sense inconsistent with his decision in the other case.

Federal Common Law.

Much surprise may be occasioned by the statement that there is any such thing as a Federal common law. Courts have so often said there is none that, in spite of some very plain facts which disprove it, the statement has been generally accepted. In the case of Wheaton *v.* Peters, 8 Pet. 658, 8 L. ed. 1080, the opinion of the court by Mr. Justice McLean said: "It is clear there can be no common law of the United States. The Federal government is composed of twenty-four sovereign and independent states, each of which may have its local usages, customs, and common law. There is no principle which pervades the Union and has the authority of law that is not embodied in the Constitution or laws of the Union. The common law could be made a part of our Federal system only by legislative adoption." As late as 1887, in the case of Smith *v.* Alabama, 124 U. S. 465, 31 L. ed. 508, Mr. Justice Matthews, writing the opinion of the court, emphatically declared that there would be no legal obligation, either *ex contractu* or *ex delicto*, on the part of a carrier to those who employed him, except for the local law of each state, and that, "if the local law is held not to apply where the carrier is engaged in foreign or interstate commerce, then, in the absence of laws passed by Congress or presumed to be adopted by it, there can be no rule of decision based on rights and duties supposed to grow out of the relation of such carriers to the public or to individuals. In other words, if the law of the particular state does not govern that relation and prescribe the rights and duties which it implies, then there is, and can be, no law that does, until Congress expressly supplies it, or is held by implication to have supplied it, in cases within its jurisdiction over foreign and interstate commerce." These declarations put in the strongest possible language the proposition that there can be no common law in the Federal courts except as they enforce the common law of the respective states.

This doctrine was for a long time accepted without much question, in spite of the fact that the Federal courts were all the time actually rendering decisions which had no foundation whatever except the common law. Such, for instance, is the decision in New York Central R. Co. *v.* Lockwood, 17 Wall. 357, 21 L. ed. 627, in which it was held that a contract made in New York, exempting a railroad company from liability for negligence, was contrary to public policy, and therefore void in the Federal courts, although in the courts of the state of New York the contract would be enforced as valid. Though the Federal court adopted a different common law on this question from that of the state tribunals, Mr. Justice Matthews, in the case of Smith *v.* Alabama, somewhat amusingly says that "the law as applied is none the less the law of that state." The justice does not explain how the Federal courts were given the power to make state law. If the common law applied in such case is state law, what business has the Federal court to repudiate the common-law doctrine there established, and make a different one for that state?

A similar situation has been created in respect to questions of commercial law. As an exception to the general doctrine that Federal courts follow state decisions on property rights in the different states, there is a long line of cases holding that the Federal courts are not controlled by state decisions on questions of general commercial law. These questions, like the question of public policy, when not based on any statute, are questions of common law purely. Yet the Federal courts, while persisting in the denial that they had any common law, have repudiated some of the common-law doctrines of the states, and have created their own body of common-law doctrines.

Facts of this kind make the existence of a body of Federal common law so plain that its denial is strange. It is therefore gratifying to find that the Supreme Court of the United States has expressly decided in a recent case that the common law does give a rule of decision in a Federal court on a right not covered by Federal statutes nor by state laws. This was the case of Western Union Teleg. Co. *v.* Call Publishing Company, Advance

Sheets U. S., in which the claim was made that the state laws could not apply to an unjust discrimination in rates in a matter of interstate commerce, and that, as the Federal statutes made no provision on that subject, and as there was no Federal common law, there was no law of any kind that controlled. This claim is certainly sustained by the above-quoted opinion of Mr. Justice Matthews in Smith *v.* Alabama; but, on the contrary, the court holds in the present case "that the principles of the common law are operative upon all interstate commercial transactions, except so far as they are modified by congressional enactment." The court refers with approval to the opinion of District Judge Shiras in Murray *v.* Chicago & N. W. R. Co. 62 Fed. Rep. 24, as one in which is collated a number of extracts from opinions, "all tending to show the recognition of a general common law existing throughout the United States, not, it is true, as a body of law distinct from the common law enforced in the states, but as containing the general rules and principles by which all transactions are controlled, except so far as those rules and principles are set aside by express statute."

Exactly what is meant by denying that this common law of the Federal courts is "a body of law distinct from the common law enforced in the states" is not quite clear. It certainly does not mean what Mr. Justice Matthews meant when he said the common law administered by a Federal court is the common law of a state. By applying the common law to interstate commerce the court in the present case does exactly what Mr. Justice Matthews said could not be done. If the common law administered by Federal courts in cases outside the range of state law is not a Federal common law, what is it? And, when this body of common-law doctrines which the Federal courts administer differs from the common law as the state courts enforce it, why is it not "distinct from" the common law enforced in the states? The language quoted may well mean merely to express the substantial unity of all the common law of this country, and to say that both Federal and state courts look to the same source for their rules of decision in matters not covered by statutes. It can hardly mean more than this. The common law of the Federal courts is as distinct from that of any state as the common law of one state is from that of another. In other words, the different jurisdictions, whether Federal or state, though looking to the same body of common law for rules of decision, act independently of each other in so doing. There is a Federal common law in the same sense that there is a different common law for each state. Whatever may be meant by the form of language used, it is certain that the supreme tribunal, notwithstanding the emphatic declarations to the contrary contained in earlier opinions of that court, now recognizes the existence of a Federal common law which the Federal courts administer unfettered by state decisions, not only where the state courts have concurrent jurisdiction, but also where the matters involved are not subject to any state law, but are exclusively within Federal control.

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Book 51, Parts 3 and 4

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The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Alteration of Instruments.

The addition by the payee, after delivery of a note to him, of the name of another person as comaker, is held in Brown *v.* Johnson (Ala.) 51 L. R. A. 403, to constitute such an alteration of the instrument as will relieve the maker.

Bankruptcy.

A purchaser from an assignee under a general assignment which constitutes an act of bankruptcy, who buys before any trustee has been appointed, but with knowledge of a petition in bankruptcy, is held in Bryan *v.* Bernheimer, U. S. Adv. Sheets, 557, to have no title superior to the title of the bankrupt's estate, and his equities, which may depend upon many circumstances, must be settled by the court of bankruptcy.

Bills and Notes.

A transfer of a negotiable note after maturity and without consideration, for the purpose of enabling the transferee to bring an action thereon in the state, is held in Edgerly *v.* Lawson (Mass.) 51 L. R. A. 432, to sustain a right of action by him against the maker in the right of the transferrer, when the latter is a bona fide holder before maturity for value.

Brokers.

A broker through whose efforts a binding contract for land is made between his principal and the owner of the land, is held in the case of Roche *v.* Smith (Mass.) 51 L. R. A. 510, to have earned his commission, although the owner cannot make good title because of encumbrances not known to the broker. The remedy of the principal is held to be against the third person.

Carriers.

A person seeking passage on an electric street car, who signals the car to stop, and then attempts to cross the track to get on the proper side for boarding the car, and is struck by it, is held in Walker *v.* St. Paul City R. Co. (Minn.) 51 L. R. A. 632, not to be guilty of negligence as matter of law, but to have a right to assume that proper signals will be regarded.

Commerce.

A sheep quarantine act authorizing the governor, when he has reason to believe that there is an epidemic of infectious disease in sheep in localities outside the state, to investigate the matter, and, if he finds that such disease exists, to make a proclamation declaring such localities infected, and prohibiting the introduction therefrom of sheep into the state except under such restrictions as, after consultation with the state sheep inspector, he may deem proper, is held in Rasmussen *v.* Idaho, U. S. Adv. Sheets, 594, to be within the police power of the state, and not an unconstitutional regulation of interstate commerce.

Constitutional Law.

Notice by mail, by publication, and by posting on the land, in proceedings for registration of title, is held in Tyler *v.* Judges of the Court of Registration (Mass.) 51 L. R. A. 433, to be sufficient to satisfy the constitutional provision for due process of law.

Contracts.

A contract by which a partnership making a sale of its business binds itself by the partnership name not to engage in such business for a certain period within the same place, though signed by the individual partners, is held in Steichen *v.* Fehleisen (Iowa) 51 L. R. 412, not to preclude them from re-engaging in such business as individuals.

Corporations.

An agreement by a corporation organized to take the property and carry on the business of a copartnership, by which it binds itself to pay all the partnership debts, is held in Morgan *v.* Randolph Clowes Co. (Conn.) 51 L. R. A. 653, to be unenforceable in an action at law by a creditor of the copartnership, since he was not a party to the contract and it was not made for his benefit.

Courts.

A court of mediation and arbitration for the amicable adjustment of differences between employers and employees is held in Renaud *v.* State Court of Mediation & Arbitration (Mich.) 51 L. R. A. 458, to be authorized by the constitutional provision for courts of conciliation, although the statute creating it does not provide it with authority to compel attendance of parties and to enforce its decisions.

A state court which has obtained jurisdiction of a suit against a corporation is held in Pendleton *v.* Lutz (Miss.) 51 L. R. A. 649, to be entitled to retain jurisdiction notwithstanding the subsequent appointment by a Federal court of a receiver for the corporation and the removal of the case based on the fact of such appointment, if the case is not otherwise removable.

Disorderly Houses.

A covered wagon traveling from place to place, in which prostitution is carried on, is held in State *v.* Chauvet (Iowa) 51 L. R. A. 630, to constitute a house of ill fame within the meaning of the statute prohibiting the keeping of such house.

Fishways.

The power of the state to require fishways in dams across streams is held in State *ex rel.* Remley *v.* Meek (Iowa) 51 L. R. A. 414, to extend to a navigable stream that flows beyond the bounds of the state, if the dam does not affect intercommunication between the states.

Game Laws.

The prohibition of the possession of quail during the closed season, made by a statute against shooting, destroying, or having the quail in possession during such season, is held in Smith *v.* State (Ind.) 51 L. R. A. 404, to be sustainable under the Federal Constitution guaranteeing due process of law, or a state Constitution prohibiting property to be taken without just compensation, notwithstanding the fact that the quail held in possession during the closed season had been lawfully acquired during the open season.

Garnishment.

A common carrier after acceptance of freight for shipment from a place within the state to a place without is held in Baldwin *v.* Great Northern R. Co. (Minn.) 51 L. R. A. 640, to be entitled to transport the property without interference by garnishment in a suit by a third person against the owner of the goods.

Husband and Wife.

A loan made to a married woman on her credit, although she gave notes therefor payable to her husband, which are void, is held in National Bank *v.* Tyndale (Mass.) 51 L. R. A. 447, to sustain an action at law against her estate upon the common counts for money lent or money had and received.

Actual notice of proceedings for divorce in a court of the state which has always been the domicil of the plaintiff and the only matrimonial domicil is held in Atherton *v.* Atherton, U. S. Adv. Sheets, 544, not to be necessary to bind a nonresident defendant if reasonable efforts to give her actual notice are required by the state statutes, and are actually made.

Bona fide residence of the plaintiff in a suit for divorce is held in Bell *v.* Bell, U. S. Adv. Sheets, 551, to be necessary to give jurisdiction of a suit for divorce against a resident of another state, and a recital of facts necessary to give jurisdiction is held not to be conclusive on the courts of another state.

Judgment.

Probate of a will, granted under statutory authority by a tribunal of another country in which the estate is located, is held in Newcomb *v.* Newcomb (Ky.) 51 L. R. A. 419, to be binding upon the courts of the country in which the testator resided.

Libel.

A circular addressed to voters, stating generally and unqualifiedly that a candidate for re-election to the legislature has championed measures opposed to the moral interests of the community, when this is stated as a fact, and not as a mere opinion or inference drawn from any specified acts, is held in Eikhoff *v.* Gilbert (Mass.) 51 L. R. A. 451, to be, when untrue, libelous *per se*, and not privileged.

Limitation of Actions.

A statute of limitations on a demand certificate of deposit is held in Mereness *v.* First Nat. Bank (Iowa) 51 L. R. A. 410, to com-

merce to run at the date of the certificate, since it is no more nor less than a promissory note; and the running of the statute is not interrupted by the death of the depositor, or by knowingly false representations by the bank amounting to a denial of liability.

Literary Property.

The common-law right of an author to his unpublished manuscript was held in Press Pub. Co. v. Monroe (C. C. App. 2d C.) 51 L. R. A. 353, not to be abrogated by the copyright acts of Congress.

Lotteries.

A merchant who gives to a designated class of customers an opportunity to secure, by lot or chance, any article of value additional to that for which such customers have paid, is held in Meyers v. State (Ga.) 51 L. R. A. 496, to violate a penal statute against lotteries or other schemes or devices for hazarding money or any valuable thing.

Master and Servant.

A coal miner going through a passage during the noon hour to another part of the mine to visit another workman is held in Ellsworth v. Metheney (C. C. App. 6th C.) 51 L. R. A. 389, not to be engaged in the performance of the duties of his employment, so as to bring his use of such passageway within the rule that requires the employer to provide a safe place for work; but the proprietor who places a dangerous electric wire along such passageway is held to be charged with the duty properly to guard and protect the wire, or to give notice of the danger from it.

The fall of a heavy casting because it had been negligently shored up by a master mechanic who was an intermediate officer in the establishment, having authority to direct the person injured and some authority as to his employment and discharge, is held in Stevens v. Chamberlin (C. C. App. 1st C.) 51 L. R. A. 513, to give no right of action to the injured employee. With this case are analyzed and marshaled the great mass of authorities on the subject of vice principalship considered with reference to the superior rank of a negligent servant.

The roadmaster of a railroad company directing the work of tearing away a portion of a bridge is held in O'Neil v. Great Northern R. Co. (Minn.) 51 L. R. A. 532, not to be the vice principal of the employer to the extent that his omission to give a particular warning of a detail thereof which portends danger would render the master liable for his omission in that respect.

Municipal Corporations.

The common-law right of a servant of a municipal corporation to a reasonably safe place to work is held in Rhobidas v. Concord (N. H.) 51 L. R. A. 381, to give him a right of action for injuries caused by negligence of the municipal authorities in failing to furnish him a reasonably safe place to work while engaged on waterworks, since the duty of the municipality to him does not affect the whole community, or depend in any way upon the performance or nonperformance of a public duty.

An ordinance forbidding the location of ten-pin alleys within city fire limits, or within 100 yards of any private residence or business house, is held in *Ex parte* Patterson (Tex. Cr. App.) 51 L. R. A. 654, to be unauthorized by the general power to regulate such alleys, where the effect of the ordinance would be to exclude such alleys from all places in the city except more than 600 yards from the business center and remote from any thoroughfare or public places, since the power of regulation does not extend to prohibition.

Pardon.

A constitutional power of the governor to grant pardons after conviction is held in People v. Marsh (Mich.) 51 L. R. A. 461, to authorize a pardon pending a hearing in the supreme court, since the application for a pardon would be an admission of guilt and a waiver of the review by the supreme court.

Partnership.

The liability of a partnership in an action for malicious prosecution is sustained in Page v. Citizens' Bkg. Co. (Ga.) 51 L. R. A. 463, when the prosecution was instituted in furtherance of the interests of the partnership and by direct authority of its members.

The right of a partner to maintain an action at law for damages resulting to the partnership by reason of the failure of his copartner to perform a duty imposed upon him by the partnership agreement is held in Miller v.

Freeman (Ga.) 51 L. R. A. 504, not to be maintainable so long as the partnership is continuing, even if the suit is for the recovery of a *pro rata* share of the damage only, and even though there may be no debts to third persons and no other debt due from one to the other.

The death of a child who strayed on a railroad right of way where the fence had been burned by a fire set to burn stumps and rubbish on such right of way is held in Erickson *v.* Great Northern R. Co. (Minn.) 51 L. R. A. 645, to give no right of action against the railroad company, since it was not bound to so guard the fire that children intruding thereon could not come in dangerous contact with it, though induced to do so by its attractiveness.

Replevin.

The possession of a person as mere agent is held in Mitchell *v.* Georgia & A. R. Co. (Ga.) 51 L. R. A. 622, to give no right to maintain replevin for interference with such possession, unless the agent has either a general or special property in the article.

Statutes.

The journal which the Constitution requires to contain a record of proceedings in the enactment of statutes is held in Montgomery Beer Bottling Works *v.* Gaston (Ala.) 51 L. R. A. 396, to be the bound and permanent record which is filed with the Secretary of State, and not the bundle of papers from which this is made up.

Usury.

The power of equity to compel the payment of legal interest as a condition of canceling a usurious contract is held in Lindsay *v.* United States Sav. & L. Co. (Ala.) 51 L. R. A. 393, not to be taken away by a Code provision that such contracts cannot be enforced except as to the principal therein, at law or in equity, since the requirement of interest as a condition of cancelation is not an enforcement of the contract.

Usury in the loan of money by an agent is held in Clarke *v.* Havard (Ga.) 51 L. R. A. 499, to be shown where the agent exacted from the borrower a commission which, added to the interest, amounted to more than the law allowed for interest, and the lender, who paid the agent nothing for his services, must have known that he would get compensation from the borrower.

Waters.

The re-formation of land that has been washed away by subsequent accretions which extend to the shore line, past the boundary line of the tract as originally granted, which was separated by intervening land from the water, is held in Ocean City Asso. *v.* Shriver (N. J.) 51 L. R. A. 425, to give the newly made land to those who would have been the owners if it had not been washed away.

Wills.

An attestation and subscription of a will in the presence of the testator is held in *Re* Cunningham (Minn.) 51 L. R. A. 642, to be made where the witnesses stepped through a doorway into the adjoining room, affixed their signatures at a table about 10 feet from the testator, though just out of his sight, but while he was seated on the side of his bed and could have seen them by stepping forward 2 or 3 feet.

Witnesses.

A divorce granted after the commission of a crime against a third person by a husband is held in State *v.* Kodat (Mo.) 51 R. L. A. 509, not to make the former wife a competent witness against him respecting such crime or conversations with the husband during marriage.

New Books.

"Pocket Edition of the Criminal and Penal Codes of New York." Annotated with Forms. By Lewis R. Parker. (The Banks Law Publishing Co., New York City.) 1 Vol. $3.50.

"Ballard's Law of Real Property." Vol. 7 and Index for Vols. 1-7. (The Ballard Publishing Co., Logansport, Ind.) 1 Vol. $6 50.

"Finch's Insurance Digest." Vol. 13. 1900. (The Bowen-Merrill Co., Indianapolis, Ind.) 1 Vol. $3.

"The Law of Recitals in Municipal Bonds." By H. A. Bronson. (Keefe-Davidson Law Book Co., St. Paul, Minn.) 1 Vol. $2.

"Wilson's Digest of Oklahoma Reports." (State Capital Printing Co., Guthrie, Okla.) 1 Vol. $6.

"Cyclopædia of Law and Procedure.) Edited by William Mack and Howard P. Nash. (American Law Book Co., New York.) 1901. Vol. 1. $6.

"Probate Reports Annotated." By George A. Clement. Vol. 5. (Baker, Voorhis & Co., New York.) 1901. $5.50.

"Law of Real Property." 2d ed. Revised, Enlarged, and Extended. Including also General Rules of Law Relative to the Purchase and Sale of Land, or Law of Vendor and Purchaser, to which is added a volume Embracing the Rights, Duties, and Remedies of Landowners. New Practitioners' Series, in Three Volumes. By Charles T. Boone. (Bancroft Whitney Company, San Francisco, Cal.) 1901. $9.

The first edition of this little work has been very favorably received, and has proved a very useful compendium of the law of real property. This second edition has been much enlarged and covers many additional features. The third volume treats extensively of the remedies for protecting and enforcing the rights of landowners. The new work is certain to meet with much favor.

"The Bench and Bar." As makers of the American Republic. By W. W. Goodrich. An Address Delivered Forefathers' Day, 1900 Celebrating the 280th Anniversary of the Landing of the Pilgrims. With portraits. (E. B. Treat & Co., New York.) 1901.

This is an admirable address by a presiding justice of the Appellate Division of the Supreme Court of New York. It pays a fitting tribute to the noble work of lawyers in the development of our national institutions and life.

"Origin and Growth of International Public Law." By Hannis Taylor. (Callaghan & Co., Chicago, Ill.) 1 Vol. $6.50.

Recent Articles in Law Journals and Reviews.

"Can Sentences be Standardized?" — 3 Bombay Law Reporter, 39.

"Duties and Liabilities of Trustees." — 3 Bombay Law Reporter, 69.

"*Res Judicata* between Codefendants."— 11 Madras Law Journal, 2.

"Abatement of Reversioner's Suit on Death of Widow or Reversioner." — 11 Madras Law Journal, 49.

"Forfeiture by Breach of Covenant." — 3 Bombay Law Reporter, 91.

"Contracts by Telegram." — 3 Bombay Law Reporter, 88.

"The Supplemental Bill in Federal Practice." — 52 Central Law Journal, 324.

"Infringement of Patents by Intention." — 17 Law Quarterly Review, 193.

"Contraband Goods and Neutral Ports." — 17 Law Quarterly Review, 193.

"Wardour Street Roman Law." — 17 Law Quarterly Review, 179.

"Trial by Jury at *Nisi Prius*." — 17 Law Quarterly Review, 171.

"The Appellate Jurisdiction of the House of Lords." — 17 Law Quarterly Review, 155.

"Contracts by Lunatics."— 17 Law Quarterly Review, 147.

"The Crown as Corporation." — 17 Law Quarterly Review, 131.

"The General Issue." — 49 American Law Register, O. S., 1.

"Parol Trusts in Lands in Virginia." — 7 Virginia Law Register, 15.

"Contributory Negligence of Infants in Illinois." — 38 Chicago Legal News, 338.

"Origin and History of the King's Bench Division."—26 Law Magazine and Review, 297.

"Roman Law: Its Study in England." — 26 Law Magazine and Review, 288.

"The Working of the Patent Acts." — 26 Law Magazine and Review, 257.

"Personal Character as a Responsibility of Citizenship." — 10 Yale Law Journal, 229.

"Corporate Trusts." — 1 Columbia Law Review, 235.

"The New York Revised Statutes and the Rule against Perpetuities." — 1 Columbia Law Review, 224.

"The Effect of War on Public Debts and on Treaties—The Case of the Spanish Indemnity." — 1 Columbia Law Review, 209.

"Independent Contractor. City not Liable for Injury through Work Performed in Negligent Manner." — 63 Albany Law Journal, 154.

"Conveyances in Fraud of Creditors." — 63 Albany Law Journal, 136.

"Territory and the Constitution."—10 Yale Law Journal, 99.

"A Defense of the Negotiable Instrument Act."—10 Yale Law Journal, 84.

[For other articles on this subject see 3 Brief of Phi Delta Phi, 175; and 14 Harvard Law Review, 595.]

"The Struggle for Constitutional Reform." —10 Yale Law Journal, 73.

"Partnership Estates."—10 Yale Law Journal, 283.

"Law as a Business."—10 Yale Law Journal, 275.

"Soldier, Lawyer, Statesman, and Man."—13 Green Bag, 157.

"Marshall Day Address."—13 Green Bag, 213.

"Specific Peformance of Contracts; Defense of Lack of Mutuality."—49 American Law Register, O. S., 270.

"The Growth and Moral Attitude of Corporations."—49 American Law Register, O. S., 221.

"Historical and Practical Considerations Regarding Expert Testimony."—15 Harvard Law Review, 40.

"Payment of Bill of Exchange or Check by the Drawee after the Drawer's Death."—14 Harvard Law Review, 588.

"Married Women's Rights in Community Property under the Law of California."—10 Yale Law Journal, 236.

"A Commemorative Address on Chief Justice Marshall."—63 Albany Law Journal, 83.

"Estoppel by Bastardy Proceedings."—65 Justice of the Peace, 273.

"Does a Mortgage under Deed Absolute in Form Gain Rights not Incident to an Ordinary Mortgage?"—52 Central Law Journal, 360.

"Insurable Interest in the Life of a Person."—52 Central Law Journal, 381.

"Where to Incorporate."—3 Brief of Phi Delta Phi, 162.

"The Negotiable Instruments Law."—3 Brief of Phi Delta Phi, 115.

"Equality and Uniformity of Taxation."—7 Western Reserve Law Journal, 106.

"Impossible Contracts.'—7 Western Reserve Law Journal, 99.

The Humorous Side.

SPECIAL PLEADINGS AND PLENTY OF THEM.—A report of a case in the Supreme Court of the United States illustrates the beauties of special pleading. It says: "It was altogether a case of special pleading. There were fourteen breaches assigned in the declaration, ten pleas, with replications and demurrers on both sides. There were demurrers to the breaches, demurrers to the pleas, and demurrers to the replications, upon which sometimes one party obtained a judgment, and sometimes the other; and whilst all this was going on between the principals, the sureties kept up an outside war of their own, by plea ing the statute of limitations, which led to a succession of other pleadings. The record contained thirty-eight printed pages, which were occupied exclusively with pleas, replications, demurrers, rejoinders, and judgments upon them; and finally the case came up to this court upon two judgments upon demurrers."

TRIED TO BEAT THE BAND.—A complaint which a correspondent says was filed in an Idaho court, runs as follows:

"I. That at all times hereinafter mentioned plaintiffs, . . . were associated together as a musical organization under the name and style of the Grangeville Brass Band.

"II. That the defendants . . . are, and at the times hereinafter mentioned were, associated together and doing business at the county and state of Idaho under the name and style of the Democratic Executive Committee of Idaho county, Idaho, and that the said defendants constituted the head push of what is commonly known and styled as the Unterrified or Great Unwashed, and are and were organized and existing for the purpose of knocking the stuffing out of the G. O. P., and then and thereby drawing public pap and growing fat and sleek therefrom.

"III. That during the months of September, October, and November, 1900, at the county and state of Idaho, the defendants then and there being desirous of rallying the Unterrified to listen to the shooting of anvil, cannon, and other big guns, and forcing and compelling the G. O. P. to dance to the music of plaintiffs, employed plaintiffs to furnish music for the entertainment and inspiration of the Great Unwashed and for the terror and intimidation of the G. O. P. for three meetings; all of which was of the reasonable value and agreed price of $60.00 in free and unlimited coin of the United States without the consent of the G. O. P.

"IV. That defendants have failed and refused to pay the said sum or any part thereof, although they are now enjoying the fat and lucrative offices much coveted by the G. O. P. and the Pops, commonly called 'Hayseeds.'

"V. That plaintiffs have demanded in writing payment thereof, and there is now due and owing from defendants to plaintiffs the said sum of $60.00, together with $5.00 attorney's fees as provided by law.

"WHEREFORE, plaintiffs demand judgment against defendants for the sum of $60.00 together with $5.00 attorney's fees, and costs of this action."